DOCUMENT RESUME

ED 466 421 SO 033 949

TITLE	Constitutional Issues: Separation of Powers. Teaching with Documents.
INSTITUTION	National Archives and Records Administration, Washington, DC.
PUB DATE	2002-06-21
NOTE	14p.; For additional "Teaching with Documents" materials, see SO 033 946-953.
AVAILABLE FROM	National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. Tel: 866-272-6272 (Toll Free); Fax: 301-837-0483; e-mail: orderstatus@nara.gov. For full text: http://www.archives.gov/digital_classroom/teaching_with_documents.html.
PUB TYPE	Guides - Classroom - Teacher (052)
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	Academic Standards; *Constitutional Law; *Federal Government; National Standards; *Primary Sources; Secondary Education; Social Studies; Student Research; Teacher Developed Materials
IDENTIFIERS	Roosevelt (Franklin D); *Separation of Powers; Supreme Court; *United States Constitution

ABSTRACT

The United States subscribes to the original premise of the framers of the Constitution that the way to safeguard against tyranny is to separate the powers of government among three branches so that each branch checks the other two. At no time in the 20th century was the devotion to that principle more vigorously evoked than in 1937, when President Franklin Roosevelt introduced a plan to increase the number of justices on the U.S. Supreme Court. The conflict set off by his plan is more understandable when viewed in the historical context of pro- and anti-New Deal politics. Roosevelt's plan for judicial reform came to be known as his attempt to pack the Supreme Court and extend his powers. Republicans were expected to vote against it, but when the chairman of the House Judiciary Committee, Hatton Sumners (D-Texas), announced his opposition, the plan's demise was sealed. This lesson plan provides a historical overview of Franklin Roosevelt's plan; identifies the correlations for the National History Standards and National Civics and Government Standards; and suggests diverse activities for classroom implementation, including vocabulary review, reading for the main idea, and persuasion techniques. The study document is a statement by Frank Gannett of Gannett Newspapers, sent to the Office of the Solicitor in the Justice Department, which expresses concern that the real issue is not judicial reform but the continued expansion of executive power. Contains written document analysis and photo analysis worksheets. (BT)

Reproductions supplied by EDRS are the best that can be made
from the original document.

ED 466 421

U.S. NATIONAL ARCHIVES & RECORDS ADMINISTRATION

www.archives.gov June 21, 2002

TEACHING WITH DOCUMENTS

Constitutional Issues: Separation of Powers

National Archives and Records Administration
700 Pennsylvania Avenue, N.W.
Washington, D.C. 20408
1-866-325-7208

http://www.archives.gov/digital_classroom/lessons/separation_of_powers/separation_of_powers.html

2002

SO 033 949

BEST COPY AVAILABLE 2

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
☑ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

Teaching With Documents Lesson Plan:

Constitutional Issues: Separation of Powers

Background

It is safe to say that a respect for the principle of separation of powers is deeply ingrained in every American. The nation subscribes to the original premise of the framers of the Constitution that the way to safeguard against tyranny is to separate the powers of government among three branches so that each branch checks the other two. Even when this system thwarts the public will and paralyzes the processes of government, Americans have rallied to its defense.

At no time in this century was the devotion to that principle more vigorously evoked than in 1937, when Franklin Roosevelt introduced a plan to increase the number of Justices on the Supreme Court. The conflict set off by the President's plan is more understandable when viewed in the historical context of expanding judicial power as well as in the contemporary context of pro- and anti-New Deal politics.

In the early national period, the judiciary was the weakest of the three branches of government. When Chief Justice John Marshall established the principle of judicial review in *Marbury v. Madison* by declaring an act of Congress unconstitutional, he greatly strengthened the judiciary. Even though the high court exercised this prerogative only one other time prior to the Civil War (*Dred Scott v. Sanford*), the establishment of judicial review made the judiciary more of an equal player with the executive and legislative branches.

After the Civil War, the Court entered a phase of judicial activism based on a conservative political outlook that further enhanced its own power. In accepting the view that the 14th amendment should be interpreted to protect corporations, the Court struck down laws that protected workers, such as minimum wage laws and laws prohibiting child labor. Critics of the Court's stand, including Justice Oliver Wendell Holmes, argued that these decisions were not based on the

Constitution but upon the laissez-faire theory of economics. By 1937 the Court was widely regarded by the public as an enemy of working people.

This sentiment was exacerbated by the Great Depression. In 1935-36, the Court struck down eight of FDR's New Deal programs, including the National Recovery Act (NRA) and the Agricultural Adjustment Act (AAA). Public antijudicial sentiment intensified; many critics questioned the constitutionality of the concept of judicial review itself. As a result of this reaction, several constitutional amendments were introduced into Congress in 1936, including one that would require a two-thirds vote of the Court whenever an act of Congress was declared unconstitutional; another that would permit Congress to revalidate federal laws previously declared unconstitutional by repassing them with a two-thirds vote of both houses, and even one that would abolish altogether the Court's power to declare federal laws unconstitutional.

FDR remained silent, hoping that the antijudicial public sentiment would continue to grow without his having to enter the fray. He avoided any direct references to the Court in the 1936 election campaign. After his election victory, however, he submitted to Congress early in February 1937 a plan for "judicial reform," which forever came to be known as his attempt to "pack" the Supreme Court. Given Roosevelt's record for legislative success, it is interesting to discover why this plan to reconstitute the Court with Justices more favorable to the New Deal backfired.

Franklin Roosevelt and his Attorney General, Homer Cummings, had considered several options. They could have attacked the issue of judicial review head on, as Congress's proposed amendments had sought to do, but they chose not to, perhaps anticipating the public's attachment to the idea of the judiciary as the guardian of the Constitution. Instead, they chose to change the number of Justices on the Court, which had been done six times since 1789. Their plan had a different twist, however, for it proposed adding a justice for every justice over the age of 70 who refused to retire, up to a maximum of 15 total.

This proposal was all the more appealing because Justice Department lawyers had discovered that the very same idea had been proposed by Justice James C. McReynolds, one of the most conservative justices then sitting on the Court, when he had been Wilson's Attorney General in 1913. The administration could not resist the appeal of such irony, and without consulting Congress, the President and his New Deal aides blundered into one of the biggest political miscalculations of their tenure. By masking their true intentions, they created a split within their own party from which they never fully recovered.

It was expected that the Republicans would cry foul, but when the chairman of the House Judiciary Committee, Democrat Hatton Sumners of Texas, announced his opposition, the plan was as good as dead. Further resistance to

the plan developed in Congress as the Court began a reversal of its previous conservative course by ruling in favor of such legislation as then National Labor Relations Act and the Social Security Act. Congressmen urged the White House to withdraw the bill, but confident of victory, FDR refused to back down. The cost was the alienation of conservative Democrats and the loss of the fight in Congress.

Letters poured into the White House and the Justice Department both attacking and supporting the President's plan. Many of the letters of support came from ordinary citizens who had worked in industries hurt by the Great Depression. The Worker's Alliance of Kalispell, MT, wrote, "We consider that Recovery has been delayed materially by the dilatory action of the Supreme Court. . . . An immediate curb on the Supreme Court is of utmost importance, then an amendment to put it in its proper place would be well and good." But others, most notably the legal establishment and the press, thought that the Supreme Court was already "in its proper place."

One of the most outspoken members of the press was the Rochester, NY, newspaper publisher, Frank Gannett. Our study document (Document 1) is a letter sent by Gannett to the Office of the Solicitor in the Justice Department and then referred to the Attorney General. Like many others in the file, it expresses the concern that the real issue is not judicial reform but the continued expansion of executive power. A text version of study document is also a part of this lesson.

Even those who trusted Roosevelt, and who believed in what the New Deal was trying to accomplish, were wary. The following excerpt from a telegram to President Roosevelt is typical.

Please watch your step while attempting to curb the powers of the honorable Supreme Court of the United States. Such action may be in order while so able a person as your excellency may remain in the president's chair but please let us look to the future when it might be in order for the citizenship of our great country to look to the Supreme Court for guidance which we might justly require.

This month's document and the others quoted here can be found in the records of the Justice Department, Record Group 60: Correspondence of the Attorney General, case file 235868.

The Document

Document 1: Statement by Frank E. Gannett, National Archives and Records Administration, Records of the Justice Department, Record Group 60

Lesson Resources

Standards Correlations

Teaching Activities

Document Analysis Worksheet

Photograph Analysis Worksheet

Page URL: http://www.archives.gov/digital_classroom/lessons/separation_of_powers/separation_of_powers.html

---

U.S. National Archives & Records Administration
700 Pennsylvania Avenue NW, Washington, DC 20408 • 1-86-NARA-NARA • 1-866-272-6272

Teaching Activities

Standards Correlations

This lesson correlates to the National History Standards.

- Era 8-The Great Depression and World War II (1929 - 1945)
  - Standard 2C-Demonstrate understanding of opposition to the New Deal, the alternative programs of its detractors, and the legacy of the New Deal.

This lesson also correlates to the National Standards for Civics and Government.

- Standard III.B.1-Evaluate, take, and defend positions on issues regarding the purposes, organization, and functions of the institutions of the national government.

Cross-curricular Connections

Share this exercise with your history and government colleagues.

Activities

Vocabulary

1. Review the definitions of the following words before reading the document.

   camouflage (verb)-to disguise in order to conceal
   expedite (verb)-to hasten
   litigation (noun)-lawsuit
   dissertation (noun)-a formal and lengthy report
   absolutism (noun)-system where ruler has unlimited powers
   integrity (noun)-honesty, wholeness
   tribunal (noun)-court of justice

2. After reading and working with the document, ask students to write a brief story of the court-packing controversy using five words from the list.

Reading for the Main Idea

Students should review what their textbook has to say about the court-packing controversy. Ask them to read the document and answer the following questions.

1. How many Justices does FDR want to add to the Supreme Court?
2. What does Gannett feel will be the result of this increase?
3. What alternative method for changing the system does Gannett propose?
4. List three principles of government that Gannett mentions in this statement.

The Constitutional Issue

1. Ask students to define the constitutional issue. Why was this issue so controversial?
2. In paragraph 4, Gannett expresses his fear that the executive will dominate the other two branches of government. Ask students to recall other times in our history when one of the three branches became too powerful.
3. Some have argued that our system of separation of powers and checks and balances paralyzes the efficient working of government and that we should amend the Constitution to provide for a parliamentary system of government. Ask interested students to research and stage a debate for the class on the question: RESOLVED that the Constitution should be amended to provide for a parliamentary system of government.

Thinking Metaphorically

1. In the third paragraph, the author uses a metaphor when he compares the Supreme Court to an anchor. Play with this idea with your students. How is the Court like an anchor? If the Court is the anchor, what is the ship? What is the sea? What other storms might there have been in our history? Invite them to suggest other possible metaphors for the Court's role in our system.
2. Supporters of Roosevelt's plan would have seen the Supreme Court differently. Follow the steps below to help students write their own metaphorical statement.
    a. List on the board how the supporters of the President's plan might have viewed the Supreme Court.

b. Ask students to look at the list and suggest something in nature or something mechanical that has those qualities. List their suggestions on the board.

c. Ask students to write several possible metaphorical statements that FDR's supporters might have used to describe the Court.

Techniques of Persuasion

Ask students to reread the document and underline the parts that are particularly persuasive, and then to complete one of the following activities.

1. Rank in order of importance the three most persuasive sections and discuss why they are most persuasive.

2. Write a brief paper describing the reasons why this document is or is not persuasive.

For Further Study

The number of Justices on the Supreme Court has been changed six times in our history: 1789, 1801, 1802, 1837, 1863, and 1869. Ask students to investigate the circumstances under which the number was changed.

U.S. National Archives & Records Administration
700 Pennsylvania Avenue NW, Washington, DC 20408 • 1-86-NARA-NARA • 1-866-272-6272

doesn't like

The Gannett Newspapers

Frank E. Gannett
Publisher

A STATEMENT BY Red

Executive Offices
Rochester, N. Y.

FRANK E. GANNETT, PUBLISHER GANNETT NEWSPAPERS

President Roosevelt has cleverly camouflaged a most amazing and startling proposal for packing the Supreme Court. It is true that the lower courts are slow and overburdened, we probably do need more judges to expedite litigation but this condition should not be used as a subtle excuse for changing the complexion and undermining the independence of our highest court. Increasing the number of judges from nine to fifteen would not make this high tribunal act any more promptly than it does now, but it would give the President control of the Judiciary Department.

A year ago I predicted that this is exactly what would happen if Roosevelt was reelected. The Supreme Court having declared invalid many of the administration measures the President now resorts to a plan of creating a Supreme Court that will be entirely sympathetic with his ideas. Provision has been made for amending the Constitution. If it is necessary to change the Constitution it should be done in the regular way. The President is mistaken, if he thinks he can conceal his real purpose of packing, influencing and controlling the Supreme Court by confusing that objective with a long dissertation on the slow action of our various courts.

The Supreme Court has been the anchor that has held America safe through many storms. Its absolute independence and integrity must never be in doubt.

Our Government is composed of three departments, Legislative, Executive and Judiciary. These are the foundations of our Democracy. As a result of the election and the transfer of powers by so-called emergency measures, the Executive now dominates the Legislative Department. The President now proposes also to dominate the Judiciary. Do we want to give to this man or any one man complete control of these three departments of our Government which have from the beginning of the Republic been kept entirely separate and independent?

FEB 20 1937

This proposal should give every American grave concern for it is a step towards absolutism and complete dictatorial power.

Frank E. Gannett

Correspondence Section

Document 1: Statement by Frank E. Gannett

Teaching With Documents Lesson Plan:
Constitutional Issues: Separation of Power

Transcription:

A STATEMENT BY
FRANK E. GANNETT, PUBLISHER GANNETT NEWSPAPERS

President Roosevelt has cleverly camouflaged a most amazing and startling proposal for packing the Supreme Court. It is true that the lower courts are slow and overburdened, we probably do need more judges to expedite litigation but this condition should not be used as a subtle excuse for changing the complexion and undermining the independence of our highest court. Increasing the number of judges from nine to fifteen would not make this high tribunal act any more promptly than it does now, but it would give the President control of the Judiciary Department.

A year ago I predicted that this is exactly what would happen if Roosevelt was reelected. The Supreme Court having declared invalid many of the administration measures the President now resorts to a plan of creating a Supreme Court that will be entirely sympathetic with his ideas. Provision has been made for amending the Constitution. If is necessary to change the Constitution it should be done in the regular way. The President is mistaken, if he thinks he can conceal his real purpose of packing, influencing and controlling the Supreme Court by confusing that objective with a long dissertation on the slow action of our various courts.

The Supreme Court has been the anchor that has held America safe through many storms. Its absolute independence and integrity must never be
in doubt.

Our Government is composed of three departments, Legislative, Executive and Judiciary. These are the foundations of our Democracy. As a result of the election and the transfer of powers by so-called emergency measures, the Executive now dominates the Legislative Department. The President now proposes also to dominate the Judiciary. Do we want to give to this man or any one man complete control of these three departments of our Government which have from the beginning of the Republic been kept entirely separate and independent?

This proposal should give every American grave concern for it is a step towards absolutism and complete dictatorial power.

Frank E. Gannett

Separation of Powers Main Page

Written Document Analysis Worksheet

1. TYPE OF DOCUMENT (Check one):

___ Newspaper	___ Map	___ Advertisement
___ Letter	___ Telegram	___ Congressional record
___ Patent	___ Press release	___ Census report
___ Memorandum	___ Report	___ Other

2. UNIQUE PHYSICAL QUALITIES OF THE DOCUMENT (Check one or more):

___ Interesting letterhead	___ Notations
___ Handwritten	___ "RECEIVED" stamp
___ Typed	___ Other
___ Seals	

3. DATE(S) OF DOCUMENT:
_____

4. AUTHOR (OR CREATOR) OF THE DOCUMENT:
_____

POSITION (TITLE):
_____

5. FOR WHAT AUDIENCE WAS THE DOCUMENT WRITTEN?
_____

6. DOCUMENT INFORMATION (There are many possible ways to answer A-E.)

A. List three things the author said that you think are important:
_____
_____
_____

B. Why do you think this document was written?
_____
_____

C. What evidence in the document helps you know why it was written? Quote from the document.
_____
_____

D. List two things the document tells you about life in the United States at the time it was written:
_____
_____

E. Write a question to the author that is left unanswered by the document:
_____
_____

Designed and developed by the
Education Staff, National Archives and Records Administration, Washington, DC 20408.

U.S. National Archives & Records Administration
700 Pennsylvania Avenue NW, Washington, DC 20408 • 1-86-NARA-NARA • 1-866-272-6272

Photo Analysis Worksheet

Step 1. Observation

A. Study the photograph for 2 minutes. Form an overall impression of the photograph and then examine individual items. Next, divide the photo into quadrants and study each section to see what new details become visible.

_____

B. Use the chart below to list people, objects, and activities in the photograph.

People	Objects	Activities

Step 2. Inference

Based on what you have observed above, list three things you might infer from this photograph.

_____

_____

_____

Step 3. Questions

A. What questions does this photograph raise in your mind?

_____

_____

B. Where could you find answers to them?

_____

_____

Designed and developed by the
Education Staff, National Archives and Records Administration, Washington, DC 20408.

Page URL: http://www.archives.gov/digital_classroom/lessons/analysis_worksheets/photo.html

U.S. National Archives & Records Administration
700 Pennsylvania Avenue NW, Washington, DC 20408 • 1-86-NARA-NARA • 1-866-272-6272

U.S. Department of Education
Office of Educational Research and Improvement (OERI)
National Library of Education (NLE)
Educational Resources Information Center (ERIC)

NOTICE

Reproduction Basis

☐ This document is covered by a signed "Reproduction Release (Blanket)" form (on file within the ERIC system), encompassing all or classes of documents from its source organization and, therefore, does not require a "Specific Document" Release form.

☒ This document is Federally-funded, or carries its own permission to reproduce, or is otherwise in the public domain and, therefore, may be reproduced by ERIC without a signed Reproduction Release form (either "Specific Document" or "Blanket").